IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 24 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

SOHAN ENGINEER CORPORATION

Appearance:

MR B.B.NAYAK FOR MR RP BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the Revenue, the following question of law arising out of the order passed in ITA No.1693/Ahd/1984 has been referred to this Court for its opinion under the provisions of Section 256(1) of the Income-tax Act,1961 (hereinafter referred to as 'the Act').

"Whether, the Income-tax Appellate Tribunal has been right in law and on facts in holding that the assessee is entitled to claim deduction under section 80J of the Income-tax Act,1961 in respect of the assessment year 1978-79 in question, when the assessee had started its business in the previous year relevant to assessment year 1973-74?"

Learned Advocate Shri B.B.Nayak has appeared for the applicant whereas no body has appeared for the respondent assessee though the respondent assessee has been duly served.

2. The question which is to be answered by this Court is whether the assessee, who started its business in the previous year relevant to the assessment year 1973-74, is entitled to claim deduction under the provisions of Section 80J of the Act in respect of the assessment year 1978-79.

3. Upon perusal of section 80J(2) of the Act, it is clear that the deduction specified in section 80J is allowed while computing total income in respect of the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or operates its cold storage plant.....etc. In the instant case, upon perusal of the record we do not find the year in which the respondent assessee began to manufacture or produce articles. It is pertinent to note that for the purpose of claiming deduction under the provisions of section 80J of the Act, the period when the assessee commences its business is not relevant. What is relevant is the year in which the industrial undertaking begins to manufacture or produce articles or starts operating its cold storage plant or plants etc.

4. In the instant case, it has not been stated as to when the assessee started manufacturing or producing articles and, therefore, it would not be possible to

answer the question which has been referred to this Court. In the circumstances, we are unable to answer the question. However, the Tribunal shall ascertain the fact as to when the assessee started its manufacturing activity and upon knowing the same and after applying the provisions of section 80J, appropriate order shall be passed by the Tribunal.

5. Under the circumstances, we decline to answer the question and the Reference is disposed of accordingly with no order as to costs.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta,J)

m.m.bhatt